

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5724 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

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MAJOOR MAHAJAN MANDAL

Versus

GOKAK VADODARA SPINNING MILLS LTD

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Appearance:

MR AK CLERK for Petitioner

MR KM PATEL for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2, 3

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 27/07/98

ORAL JUDGEMENT

Majoor Mahajan Mandal a union of the workmen of the respondent no.1 has filed the present petition.

2. The petitioner has come before this court by contending that the respondent no.1 has illegally passed

an order of closure to be effective from 3.7.1998. It is further the claim of the petitioners that the respondent no.1 had introduced Voluntary Retirement Scheme (VRS). Said VRS was made applicable to more than 58 workmen by the respondent no.1 and when these workman had applied for getting the benefits of the said VRS, the respondent no.1 has not taken any decision on their claim. According to the petitioner, said action of respondent no 1 is contrary to the order passed by the competent authority permitting them to effect the closure.

3. The respondent no.1 is disputing the claim of the petitioner that they have not considered the application of 58 workmen for VRS and they also contended that the order of closure passed by them is valid and legal.

4. If the provisions of section 25-0 of the I.D.Act are considered then it would be quite clear that sub-section 1 of section 25-0 that the industrialist must apply for prior permission for closure atleast 90 days before the date on which, he intends to close his industry. Sub-section 3 of section 25-0 lays down that if the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, then it should be presumed that such application has been granted. Sub-section 5 of section 25-0 further mentions that in case if there happens to be any application made by the employer or workman to review the order granting or refusing to grant permission then the Tribunal should decide the same within 30 days. Now if all the provisions of these sub sections are considered, then it would be quite clear that it is not open for the industry to effect closure even in case if the permission is granted within 90 days from the date of presenting an application for permission. Now in the instant case, the respondent no.1 has been permitted to close down certain sections of the industry and the closure order made clearly shows that the closure is to be effective from 1.8.1998 and said order is passed on 12.7.79. Said order is passed on 2.7.98 permitting the industrialist to effect the closure from 1.8.98 . Therefore, though the respondent has issued an order of closure/termination by saying that the same should be effective from 3.7.98, said order in law will not be effective before 1.8.1998. The order of termination of services of the members of the petitioner union issued by the respondent no.1 would be legally effective from 1.8.98 and not on 3.7.97 as has been mentioned by the respondent no.1 in its order.

5. As regards the claim of wrongful closure or wrongful termination of services as well as wrongful denial of giving VRS, the petitioner will have to raise said claims by way of industrial dispute. It is submitted before me that the petitioner has already moved the authorities for the purpose by giving application on 24.7.1998. Learned Assistant Government Pleader says that the Government authorities concerned will take appropriate steps according to law and necessary reference will be made on or before 30.7.1998 and if the petitioner want any interim relief, they will have to approach the Court before whom the reference is made. The Labour Court/Industrial Court is to consider and decide the reference on merits without in any way being influenced by the order of this Court. With these observations , the petition is disposed of. Notice discharged. No order as to costs.

(S.D.Pandit.J)